

Union Calendar No. 242

103D CONGRESS
2D SESSION

H. R. 2760

[Report No. 103-439]

A BILL

To authorize the Marine Mammal Protection Act for a period of 6 years, to establish a new regime to govern the incidental taking of marine mammals in the course of commercial fishing operations, and for other purposes.

MARCH 21, 1994

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JULY 27, 1993

Mr. STUDDS (for himself, Mr. YOUNG of Alaska, Mr. FIELDS of Texas, Mr. MANTON, and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

MARCH 21, 1994

Additional sponsor: Mr. TORKILDSEN

MARCH 21, 1994

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 27, 1993]

A BILL

To authorize the Marine Mammal Protection Act for a period of 6 years, to establish a new regime to govern the incidental taking of marine mammals in the course of commercial fishing operations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Marine Mammal Protec-*
5 *tion Act Amendments of 1994”.*

6 **SEC. 2. AMENDMENT OF MARINE MAMMAL PROTECTION**

7 **ACT OF 1972.**

8 *Except as otherwise expressly provided, whenever in*
9 *this Act an amendment or repeal is expressed in terms of*
10 *an amendment to, or repeal of, a section or other provision,*
11 *the reference shall be considered to be made to a section or*
12 *other provision of the Marine Mammal Protection Act of*
13 *1972 (16 U.S.C. 1361 et seq.).*

14 **SEC. 3. FINDINGS AND DECLARATION OF POLICY.**

15 *Section 2 (16 U.S.C. 1361) is amended—*

16 (1) *in paragraph (2) by inserting “essential*
17 *habitats, including” after “made to protect”; and*

18 (2) *in paragraph (5) in the matter following*
19 *subparagraph (B) by inserting “and their habitats”*
20 *before “is therefore necessary”.*

21 **SEC. 4. MORATORIUM AND EXCEPTIONS.**

22 *(a) Section 101(a) (16 U.S.C. 1371(a)) is amended—*

23 (1) *by amending paragraph (1) to read as*
24 *follows:*

1 “(1) Consistent with the provisions of section
2 104, permits may be issued by the Secretary for tak-
3 ing, and importation for purposes of scientific re-
4 search, public display, photography for educational or
5 commercial purposes, or enhancing the survival or re-
6 covery of a species or stock, or for importation of
7 polar bear parts (other than internal organs) taken in
8 sport hunts in Canada. Such permits, except permits
9 issued under section 104(c)(5), may be issued if the
10 taking or importation proposed to be made is first re-
11 viewed by the Marine Mammal Commission and the
12 Committee of Scientific Advisors on Marine Mammals
13 established under title II. The Commission and Com-
14 mittee shall recommend any proposed taking or im-
15 portation, other than importation under section
16 104(c)(5), which is consistent with the purposes and
17 policies of section 2 of this Act. If the Secretary issues
18 such a permit for importation, the Secretary shall
19 issue to the importer concerned a certificate to that ef-
20 fect in such form as the Secretary of the Treasury
21 prescribes, and such importation may be made upon
22 presentation of the certificate to the customs officer
23 concerned.”;

24 (2) in paragraph (2) in the first sentence by
25 striking “and permits may” and all that follows

1 *through “section 103.” and inserting “and authoriza-*
2 *tions may be granted therefor under section 118 sub-*
3 *ject to regulations prescribed by the Secretary.”;*

4 *(3) in paragraph (3)(B)—*

5 *(A) by inserting “, photography for edu-*
6 *cational or commercial purposes,” after “pur-*
7 *poses”; and*

8 *(B) by inserting “or as provided for under*
9 *paragraph (5) of this subsection,” after “sub-*
10 *section,”;*

11 *(4) by amending paragraph (4) to read as*
12 *follows:*

13 *“(4)(A) Except as provided in subparagraph (C),*
14 *the provisions of this Act shall not apply to the use*
15 *of measures—*

16 *“(i) by the owner of fishing gear or catch,*
17 *or an employee or agent of such owner, to deter*
18 *a marine mammal from damaging the gear or*
19 *catch;*

20 *“(ii) by the owner of other private property,*
21 *or an agent, bailee, or employee of such owner,*
22 *to deter a marine mammal from damaging pri-*
23 *vate property;*

24 *“(iii) by any person, to deter a marine*
25 *mammal from endangering personal safety; or*

1 “(iv) by a government employee, to deter a
2 marine mammal from damaging public prop-
3 erty,
4 so long as such measures do not result in the death
5 or serious injury of a marine mammal.

6 “(B) The Secretary shall, through consultation
7 with appropriate experts, and after notice and oppor-
8 tunity for public comment, publish in the Federal
9 Register a list of guidelines for use in safely deterring
10 marine mammals. In the case of marine mammals
11 listed as endangered species or threatened species
12 under the Endangered Species Act of 1973, the Sec-
13 retary shall recommend specific measures which may
14 be used to nonlethally deter marine mammals. Ac-
15 tions to deter marine mammals consistent with such
16 guidelines shall not be a violation of this Act.

17 “(C) If the Secretary determines, using the best
18 scientific information available, that certain forms of
19 deterrence have a significant adverse effect on marine
20 mammals, the Secretary may prohibit such deterrent
21 methods, after notice and opportunity for public com-
22 ment, through regulation under this Act.

23 “(D) The authority to deter marine mammals
24 pursuant to subparagraph (A) applies to all marine

1 *mammals, including all stocks designated as depleted*
2 *under this Act.”.*

3 *(5) in paragraph (5)(A) by inserting “, other*
4 *than by harassment,” after “taking” the first place it*
5 *appears;*

6 *(6) in paragraph (5) by adding at the end the*
7 *following new subparagraphs:*

8 *“(D)(i) Upon request therefor by citizens of the*
9 *United States who engage in a specified activity*
10 *(other than commercial fishing) within a specific geo-*
11 *graphic region, the Secretary shall authorize, for peri-*
12 *ods of not more than 1 year, subject to such condi-*
13 *tions as the Secretary may specify, the incidental, but*
14 *not intentional, taking by harassment of small num-*
15 *bers of marine mammals of a species or population*
16 *stock by such citizens while engaging in that activity*
17 *within that region if the Secretary finds that such*
18 *harassment during each period concerned—*

19 *“(I) will have a negligible impact on such*
20 *species or stock, and*

21 *“(II) will not have an unmitigable adverse*
22 *impact on the availability of such species or*
23 *stock for taking for subsistence uses pursuant to*
24 *subsection (b), or section 109(f) or 119.*

1 “(ii) The authorization for such activity shall
2 prescribe, where applicable—

3 “(I) permissible methods of taking pursuant
4 to such activity, and other means of effecting the
5 least practicable impact on such species or stock
6 and its habitat, paying particular attention to
7 rookeries, mating grounds, and areas of similar
8 significance, and on the availability of such spe-
9 cies or stock for subsistence uses pursuant to sub-
10 section (b) or section 109(f) or 119,

11 “(II) the measures that the Secretary deter-
12 mines are necessary to ensure no unmitigable
13 adverse impact on the availability of the species
14 or stock for subsistence uses pursuant to sub-
15 section (b) or section 109(f) or 119, and

16 “(III) requirements pertaining to the mon-
17 itoring and reporting of such taking, including
18 requirements for the independent peer review of
19 proposed monitoring plans or other research pro-
20 posals where the proposed activity may affect the
21 availability of a species or stock for taking for
22 subsistence uses pursuant to subsection (b) or
23 section 109(f) or 119.

24 “(iii) The Secretary shall publish a proposed au-
25 thorization not later than 45 days after receiving an

1 *application under this subparagraph and request*
2 *public comment through notice in the Federal Reg-*
3 *ister, newspapers of general circulation, and appro-*
4 *priate electronic media and to all locally affected*
5 *communities for a period of 30 days after publica-*
6 *tion. Not later than 45 days after the close of the pub-*
7 *lic comment period, if the Secretary makes the find-*
8 *ings set forth in clause (i), the Secretary shall issue*
9 *an authorization with appropriate conditions to meet*
10 *the requirements of clause (ii).*

11 *“(iv) The Secretary may annually renew an au-*
12 *thorization issued under this subparagraph after pro-*
13 *viding for 30 days of public comment and consulting*
14 *with the parties affected by the authorization, if the*
15 *Secretary finds that the requirements of clause (i)*
16 *continue to be met.*

17 *“(v) The Secretary shall establish additional con-*
18 *ditions or restrictions on an authorization renewed*
19 *under clause (iv) if the Secretary finds, based on pub-*
20 *lic comment, that such conditions or restrictions are*
21 *necessary to meet the provisions of clause (ii).*

22 *“(vi) The Secretary shall modify, suspend, or re-*
23 *voke an authorization if the Secretary finds that the*
24 *provisions of clauses (i) or (ii) are not being met.*

1 “(vii) A person conducting an activity for which
2 an authorization has been granted under this sub-
3 paragraph shall not be subject to the penalties of this
4 Act for taking by harassment that occurs in compli-
5 ance with such authorization.

6 “(E) The Secretary may issue a permit under
7 this paragraph for periods of up to 3 years for the in-
8 cidental, but not the intentional, taking by persons
9 using vessels of the United States and vessels which
10 have valid fishing permits issued by the Secretary in
11 accordance with section 204(b) of the Magnuson Fish-
12 ery Conservation and Management Act (16 U.S.C.
13 1824(b)), while engaging in commercial fishing oper-
14 ations, of small numbers of marine mammals from a
15 species or population stock that is listed as an endan-
16 gered species or threatened species under the Endan-
17 gered Species Act of 1973. Such permit may be issued
18 only if the Secretary determines, after notice and op-
19 portunity for public comment, that—

20 “(i) such taking will have a negligible im-
21 pact on the species or stock;

22 “(ii) a program is in place which will allow
23 reliable estimation and monitoring of the level of
24 incidental take; and

1 “(iii) a recovery plan has been developed or
2 is in the process of being developed for the species
3 or stock pursuant to the Endangered Species Act
4 of 1973. A permit may be issued under this sub-
5 paragraph to an organization representing more
6 than 1 individual or fishing vessel.

7 “(F) If the Secretary determines that the issu-
8 ance of a permit under this paragraph for a species
9 or stock has resulted or is likely to result in levels of
10 incidental takes which will have an impact that is
11 more than negligible on the species or stock, the Sec-
12 retary shall modify, suspend, or revoke the permit. In
13 making a determination under this subparagraph, the
14 Secretary shall consider the level of incidental takes
15 by each permit holder in a fishery and whether a per-
16 mit holder has failed to comply with the terms and
17 conditions of the permit. The Secretary shall notify
18 the permit holder before modifying, suspending, or re-
19 voking a permit.

20 “(G) The Secretary shall prescribe such proce-
21 dures as are necessary to carry out this paragraph,
22 including the form and manner in which application
23 for permits may be made.

24 “(H) This paragraph shall not govern the inci-
25 dental taking of California sea otters and shall not be

1 *deemed to amend or repeal the Act of November 7,*
2 *1986 (Public Law 99–625; 100 Stat. 3500).”.*

3 *(7) by adding at the end the following new para-*
4 *graph:*

5 *“(6)(A) A marine mammal product may be im-*
6 *ported into the United States if the product—*

7 *“(i) was legally possessed and exported by*
8 *any citizen of the United States in conjunction*
9 *with travel outside the United States, provided*
10 *that the product is imported into the United*
11 *States by the same person upon the termination*
12 *of travel and is registered at the time of export*
13 *and import;*

14 *“(ii) was acquired outside of the United*
15 *States as part of a cultural exchange by an In-*
16 *Indian, Aleut, or Eskimo residing in Alaska, and*
17 *is registered at the time of import; or*

18 *“(iii) is owned by a Native inhabitant of*
19 *Russia, Canada, or Greenland and is imported*
20 *in conjunction with travel within the United*
21 *States or as part of a cultural exchange with an*
22 *Indian, Aleut, or Eskimo residing in Alaska.*

23 *“(B) For the purposes of this paragraph, the*
24 *term—*

1 “(i) ‘Native inhabitant of Russia, Canada,
2 or Greenland’ means a person residing in Rus-
3 sia, Canada, or Greenland who is related by
4 blood to, is a member of the same clan or ethno-
5 logical grouping as, or shares a common heritage
6 with, an Indian, Aleut, or Eskimo residing in
7 Alaska; and

8 “(ii) ‘cultural exchange’ means the sharing
9 or exchange of ideas, information, gifts, clothing,
10 or handicrafts between an Indian, Aleut, or Es-
11 kimo residing in Alaska and a Native inhabitant
12 of Russia, Canada, or Greenland, including for
13 the purpose of rendering of raw marine mammal
14 parts into clothing or handicrafts through carv-
15 ing, painting, sewing, or decorating but does not
16 include an exchange for commercial purposes.

17 “(C) Raw marine mammal parts imported
18 under subparagraph (A)(ii) or (iii) shall be marked
19 or tagged under the requirements of section 109(i).”.

20 (b) Section 101(c) is amended to read as follows:

21 “(c) It shall not be a violation of this Act to take a
22 marine mammal if such taking is imminently necessary in
23 self-defense or to save the life of a person in immediate dan-
24 ger, and such taking is reported to the Secretary within
25 48 hours.”.

1 **SEC. 5. DEPLETION DETERMINATION.**

2 Section 101(b) (16 U.S.C. 1371) is amended by adding
3 the following at the end: “Before making a determination
4 under this subsection that a species or stock of marine mam-
5 mal is depleted, the Secretary shall identify and make
6 available to the public the reasons for making a determina-
7 tion and provide opportunity, at the request of any inter-
8 ested party, for a hearing on the record with respect to the
9 determination.”.

10 **SEC. 6. PERMITS.**

11 (a) *PROHIBITIONS.*—Section 102(a) (16 U.S.C.
12 1372(a)) is amended—

13 (1) in paragraph (2)(B) by striking “for any
14 purpose in any way connected with the taking or im-
15 portation of” and inserting “to take or import”; and

16 (2) in paragraph (4) by—

17 (A) striking “or offer to purchase or sell”
18 and inserting “export, or offer to purchase, sell,
19 or export”;

20 (B) striking “product; and” and inserting
21 “product—”; and

22 (C) inserting after and below the text of the
23 paragraph the following:

24 “(A) that is taken in violation of this Act;

25 or

1 “(B) for any purpose other than public dis-
2 play, scientific research, or enhancing the sur-
3 vival of a species or stock as provided for under
4 subsection 104(c); and”.

5 (b) *PERMITS*.—Section 104 (16 U.S.C. 1374) is
6 amended—

7 (1) in subsection (a) by inserting “except for the
8 incidental taking of marine mammals in the course
9 of commercial fishing operations” before the period at
10 the end;

11 (2) in subsection (c)—

12 (A) in paragraph (1) in the first sentence
13 by striking “and after”;

14 (B) by amending paragraph (2) to read as
15 follows:

16 “(2)(A) A permit may be issued to take or im-
17 port a marine mammal for the purpose of public dis-
18 play only to a person which the Secretary deter-
19 mines—

20 “(i) offers a program for education or con-
21 servation purposes that is based on profes-
22 sionally recognized standards of the public dis-
23 play community;

24 “(ii) is registered or holds a license issued
25 under 7 U.S.C. 2131; and

1 “(iii) maintains facilities for the public dis-
2 play of marine mammals that are open to the
3 public on a regularly scheduled basis and that
4 access to such facilities is not limited or re-
5 stricted other than by charging of an admission
6 fee.

7 “(B) A permit under this paragraph shall grant
8 to the person to which it is issued the right, without
9 obtaining any additional permit or authorization
10 under this Act, to—

11 “(i) take, import, purchase, offer to pur-
12 chase, possess, or transport the marine mammal
13 that is the subject of the permit; and

14 “(ii) sell, export, or otherwise transfer pos-
15 session of the marine mammal, or offer to sell,
16 export, or otherwise transfer possession of the
17 marine mammal—

18 “(I) for the purpose of public display,
19 to a person that meets the requirements of
20 clauses (i), (ii), and (iii) of subparagraph
21 (A);

22 “(II) for the purpose of scientific re-
23 search, to a person that meets the require-
24 ments of paragraph (3); or

1 “(III) for the purpose of enhancing the
2 survival or recovery of a species or stock, to
3 a person that meets the requirements of
4 paragraph (4).

5 “(C) A person to which a marine mammal is
6 sold or exported or to which possession of a marine
7 mammal is otherwise transferred under the authority
8 of subparagraph (B) shall have the rights and respon-
9 sibilities described in subparagraph (B) with respect
10 to the marine mammal without obtaining any addi-
11 tional permit or authorization under this Act. Such
12 responsibilities shall be limited to—

13 “(i) for the purpose of public display, the
14 responsibility to meet the requirements of clauses
15 (i), (ii), and (iii) of subparagraph (A),

16 “(ii) for the purpose of scientific research,
17 the responsibility to meet the requirements of
18 paragraph (3), and

19 “(iii) for the purpose of enhancing the sur-
20 vival or recovery of a species or stock, the respon-
21 sibility to meet the requirements of paragraph
22 (4).

23 “(D) If the Secretary—

24 “(i) finds in concurrence with the Secretary
25 of Agriculture, that a person that holds a permit

1 under this paragraph for a marine mammal, or
2 a person exercising rights under subparagraph
3 (C), no longer meets the requirements of subpara-
4 graph (A)(ii) and is not reasonably likely to
5 meet those requirements in the near future, or

6 “(ii) finds that a person that holds a permit
7 under this paragraph for a marine mammal, or
8 a person exercising rights under subparagraph
9 (C), no longer meets the requirements of subpara-
10 graph (A)(i) or (iii) and is not reasonably likely
11 to meet those requirements in the near future,

12 the Secretary may revoke the permit in accordance
13 with section 104(e), seize the marine mammal, or co-
14 operate with other persons authorized to hold marine
15 mammals under this Act for disposition of the marine
16 mammal. The Secretary may recover from the person
17 expenses incurred by the Secretary for that seizure.

18 “(E) No marine mammal held pursuant to a
19 permit issued under subparagraph (A), or by a per-
20 son exercising rights under subparagraph (C), may be
21 sold, purchased, exported, or transported unless the
22 Secretary is notified of such action no later than 15
23 days before such action, and such action is for pur-
24 poses of public display, scientific research, or enhanc-
25 ing the survival or recovery of a species or stock. The

1 *Secretary may only require the notification to include*
2 *the information required for the inventory established*
3 *under paragraph (10).”;*

4 *(C) by amending paragraph (3) to read as*
5 *follows:*

6 *“(3)(A) The Secretary may issue a permit under*
7 *this paragraph for scientific research purposes that*
8 *may result in a taking of a marine mammal to an*
9 *applicant which submits with its permit application*
10 *information indicating that the taking is required to*
11 *further a bona fide scientific purpose. The Secretary*
12 *may issue a permit under this paragraph before the*
13 *end of the public review and comment period required*
14 *under subsection (d)(2) if delaying issuance of the*
15 *permit could result in harm to a species, population,*
16 *or individual, or in loss of unique research opportuni-*
17 *ties.*

18 *“(B) No permit issued for purposes of scientific*
19 *research shall authorize the lethal taking of a marine*
20 *mammal unless the applicant demonstrates that a*
21 *nonlethal method of conducting the research is not*
22 *feasible. The Secretary shall not issue a permit for re-*
23 *search which involves the lethal taking of a marine*
24 *mammal from a species or stock that is depleted, un-*
25 *less the Secretary determines that the results of such*

1 *research will directly benefit that species or stock, or*
2 *that such research fulfills a critically important re-*
3 *search need.*

4 *“(C) Not later than 120 days after the date of*
5 *enactment of the Marine Mammal Protection Act*
6 *Amendments of 1994, the Secretary shall issue a gen-*
7 *eral authorization and implementing regulations al-*
8 *lowing bona fide scientific research that may result*
9 *only in taking by Level B harassment of a marine*
10 *mammal. Such authorization shall apply to persons*
11 *which submit, by 60 days before commencement of*
12 *such research, a letter of intent via certified mail to*
13 *the Secretary containing the following:*

14 *“(i) The species or stocks of marine mam-*
15 *mals which may be harassed.*

16 *“(ii) Geographic location of the research.*

17 *“(iii) The period of time over which the re-*
18 *search will be conducted.*

19 *“(iv) The purpose of the research, including*
20 *a description of how the definition of bona fide*
21 *research as established under this Act would*
22 *apply.*

23 *“(v) Methods to be used to conduct the re-*
24 *search.*

1 *Not later than 30 days after receipt of a letter of in-*
2 *tent to conduct scientific research under the general*
3 *authorization, the Secretary may notify the applicant*
4 *that the proposed research is likely to result in the*
5 *taking, including Level A harassment, of a marine*
6 *mammal, and that subparagraph (A) applies. If no*
7 *such notification is received, the proposed research*
8 *shall be covered under the general authorization.”;*
9 *and*

10 *(D) by adding at the end the following new*
11 *paragraphs:*

12 *“(5)(A) The Secretary may issue a permit for*
13 *the importation of polar bear parts (other than inter-*
14 *nal organs) taken in sport hunts in Canada, includ-*
15 *ing polar bears taken prior to the date of enactment*
16 *of the Marine Mammal Protection Act Amendments of*
17 *1994, to an applicant which submits with its permit*
18 *application proof that the polar bear was legally har-*
19 *vested in Canada. Such a permit shall be issued if the*
20 *Secretary, in consultation with the Marine Mammal*
21 *Commission and after notice and opportunity for*
22 *public comment, finds that—*

23 *“(i) Canada has a monitored and enforced*
24 *sport hunting program consistent with the pur-*

1 *poses of the Agreement on the Conservation of*
2 *Polar Bears;*

3 “(ii) *Canada has a sport hunting program*
4 *based on scientifically sound quotas ensuring*
5 *sustainable populations;*

6 “(iii) *the export and subsequent import are*
7 *consistent with the provisions of the Convention*
8 *on International Trade in Endangered Species*
9 *of Wild Fauna and Flora and other inter-*
10 *national agreements and conventions; and*

11 “(iv) *the export and subsequent import are*
12 *not likely to contribute to illegal trade in bear*
13 *parts.*

14 “(B) *The Secretary shall establish and charge a*
15 *reasonable fee for permits issued under this para-*
16 *graph. All fees collected under this paragraph shall be*
17 *available to the Secretary for use in developing and*
18 *implementing cooperative research and management*
19 *programs for the conservation of polar bears in Alas-*
20 *ka and Russia pursuant to section 113(d).*

21 “(6) *A permit may be issued for photography for*
22 *educational or commercial purposes involving marine*
23 *mammals in the wild only to an applicant which*
24 *submits with its permit application information indi-*
25 *cating that the taking will be limited to Level B har-*

1 *assment, and the manner in which the products of*
2 *such activities will be made available to the public.*

3 *“(7) Upon request by a person for a permit*
4 *under paragraph (2), (3), or (4) for a marine mam-*
5 *mal which is in the possession of any person author-*
6 *ized to possess it under this Act and which is deter-*
7 *mined under guidance under section 402(a) not to be*
8 *releasable to the wild, the Secretary shall issue the*
9 *permit to the person requesting the permit if that per-*
10 *son—*

11 *“(A) meets the requirements of clauses (i),*
12 *(ii), and (iii) of paragraph (2)(A), in the case*
13 *of a request for a permit under paragraph (2);*

14 *“(B) meets the requirements of paragraph*
15 *(3), in the case of a request for a permit under*
16 *that paragraph; or*

17 *“(C) meets the requirements of paragraph*
18 *(4), in the case of a request for a permit under*
19 *that paragraph.*

20 *“(8)(A) No additional permit or authorization*
21 *shall be required to possess, sell, purchase, transport,*
22 *export, or offer to sell or purchase the progeny of ma-*
23 *rine mammals taken or imported under this sub-*
24 *section, if such possession, sale, purchase, transport,*
25 *export, or offer to sell or purchase is—*

1 “(i) for the purpose of public display, and
2 by or to, respectively, a person which meets the
3 requirements of clauses (i), (ii), and (iii) of
4 paragraph (2)(A);

5 “(ii) for the purpose of scientific research,
6 and by or to, respectively, a person which meets
7 the requirements of paragraph (3), or

8 “(iii) for the purpose of enhancing the sur-
9 vival or recovery of a species or stock, and by or
10 to, respectively, a person which meets the re-
11 quirements of paragraph (4).

12 “(B)(i) A person which has a permit under
13 paragraph (2), or a person exercising rights under
14 paragraph (2)(C), which has possession of a marine
15 mammal that gives birth to progeny shall—

16 “(I) notify the Secretary of the birth of such
17 progeny within 30 days after the date of birth;
18 and

19 “(II) notify the Secretary of the sale, pur-
20 chase, or transport of such progeny no later than
21 15 days before such action.

22 “(ii) The Secretary may only require notifica-
23 tion under clause (i) to include the information re-
24 quired for the inventory established under paragraph
25 (10).

1 “(C) Any progeny of a marine mammal born in
2 captivity before the date of the enactment of the Ma-
3 rine Mammal Protection Act Amendments of 1994
4 and held in captivity for the purpose of public dis-
5 play shall be treated as though born after that date
6 of enactment.

7 “(9) No marine mammal may be exported for
8 the purpose of public display, scientific research, or
9 enhancing the survival or recovery of a species or
10 stock unless the receiving facility meets standards that
11 are comparable to the requirements that a person
12 must meet to receive a permit under this subsection
13 for that purpose.

14 “(10) The Secretary shall establish and maintain
15 an inventory of all marine mammals possessed pursu-
16 ant to permits issued under paragraph (2)(A), by
17 persons exercising rights under paragraph (2)(C), and
18 all progeny of such marine mammals. The inventory
19 shall contain, for each marine mammal, only the fol-
20 lowing information which shall be provided by a per-
21 son holding a marine mammal under this Act:

22 “(A) The name of the marine mammal or
23 other identification.

24 “(B) The sex of the marine mammal.

1 “(C) The estimated or actual birth date of
2 the marine mammal.

3 “(D) The date of acquisition or disposition
4 of the marine mammal by the permit holder.

5 “(E) The source from whom the marine
6 mammal was acquired including the location of
7 the take from the wild, if applicable.

8 “(F) If the marine mammal is transferred,
9 the name of the recipient.

10 “(G) A notation if the animal was acquired
11 as the result of a stranding.

12 “(H) The date of death of the marine mam-
13 mal and the cause of death when determined.”;
14 and

15 (3) in subsection (e)(1) by—

16 (A) striking “or” at the end of subpara-
17 graph (A);

18 (B) striking the period at the end of sub-
19 paragraph (B) and inserting “; or”; and

20 (C) adding at the end the following new
21 subparagraph:

22 “(C) if, in the case of a permit under subsection
23 (c)(5) authorizing importation of polar bear parts,
24 the Secretary, in consultation with the appropriate
25 authority in Canada, determines that the sustain-

1 *ability of Canada’s polar bear populations are being*
 2 *adversely affected or that sport hunting may be hav-*
 3 *ing a detrimental effect on maintaining polar bear*
 4 *populations throughout their range.”.*

5 *(c) EXISTING PERMITS.—Any permit issued under sec-*
 6 *tion 104(c)(2) of the Marine Mammal Protection Act of*
 7 *1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment*
 8 *of this Act is hereby modified to be consistent with that*
 9 *section as amended by this Act.*

10 **SEC. 7. PURPOSE AND USE OF THE FUND.**

11 *Section 405 (16 U.S.C. 1421d) as amended by this Act*
 12 *is further amended—*

13 *(1)(A) in subsection (b)(1)(A) by striking “and”*
 14 *at the end of clause (i); and*

15 *(B) by inserting a new clause (iii) as follows:*

16 *“(iii) for care and maintenance of a marine*
 17 *mammal seized under section 104(c)(2)(C);*
 18 *and”;* and

19 *(2) in subsection (d) by striking “For purposes*
 20 *of carrying out this title, the” and inserting “The”.*

21 **SEC. 8. APPLICATION TO OTHER TREATIES AND CONVEN-**
 22 **TIONS.**

23 *Section 113 (16 U.S.C. 1383) is amended by—*

24 *(1) designating the existing paragraph as sub-*
 25 *section (a); and*

1 (2) adding at the end the following new sub-
2 sections:

3 “(b) Not later than 1 year after the date of enactment
4 of the Marine Mammal Protection Act Amendments of
5 1994, the Secretary of the Interior shall, in consultation
6 with the contracting parties, initiate a review of the effec-
7 tiveness of the Agreement on the Conservation of Polar
8 Bears, as provided for in Article IX of the Agreement, and
9 establish a process by which future reviews shall be con-
10 ducted.

11 “(c) The Secretary of the Interior, in consultation with
12 the Secretary of State and the Marine Mammal Commis-
13 sion, shall review the effectiveness of United States imple-
14 mentation of the Agreement on the Conservation of Polar
15 Bears, particularly with respect to the habitat protection
16 mandates contained in Article II. The Secretary shall re-
17 port the results of this review to the Committee on Merchant
18 Marine and Fisheries of the House of Representatives and
19 the Committee on Commerce, Science, and Transportation
20 of the Senate not later than April 1, 1995.

21 “(d) Not later than 6 months after the date of enact-
22 ment of the Marine Mammal Protection Act Amendments
23 of 1994, the Secretary of the Interior, acting through the
24 Secretary of State and in consultation with the Marine
25 Mammal Commission and the State of Alaska, shall consult

1 *with the appropriate officials of the Russian Federation on*
 2 *the development and implementation of enhanced coopera-*
 3 *tive research and management programs for the conserva-*
 4 *tion of polar bears in Alaska and Russia. The Secretary*
 5 *shall report the results of this consultation and provide*
 6 *periodic progress reports on the research and management*
 7 *programs to the Committee on Merchant Marine and Fish-*
 8 *eries of the House of Representatives and the Committee on*
 9 *Commerce, Science and Transportation of the Senate.”.*

10 ***SEC. 9. TAKING OF MARINE MAMMALS INCIDENTAL TO COM-***
 11 ***MERCIAL FISHING OPERATIONS; COOPERA-***
 12 ***TIVE AGREEMENTS IN ALASKA.***

13 *(a) IN GENERAL.—Title I (16 U.S.C. 1371 et seq.) is*
 14 *amended by adding at the end the following new sections:*

15 ***“SEC. 118. TAKING OF MARINE MAMMALS INCIDENTAL TO***
 16 ***COMMERCIAL FISHING OPERATIONS.***

17 *“(a) IN GENERAL.—*

18 *“(1) Effective on the date of enactment of the*
 19 *Marine Mammal Protection Act Amendments of 1994*
 20 *and except as provided in paragraphs (2), (3), and*
 21 *(4), the provisions of this section shall govern the in-*
 22 *cidental taking of marine mammals in the course of*
 23 *commercial fishing operations by persons using ves-*
 24 *sels of the United States and vessels which have valid*
 25 *fishing permits issued by the Secretary in accordance*

1 *with section 204(b) of the Magnuson Fishery Con-*
2 *servation and Management Act (16 U.S.C. 1824(b)).*
3 *It shall be the immediate goal that the incidental kill*
4 *or serious injury of marine mammals permitted in*
5 *the course of commercial fishing operations be reduced*
6 *to insignificant levels approaching a zero mortality*
7 *and serious injury rate within 5 years after the date*
8 *of enactment of the Marine Mammal Protection Act*
9 *Amendments of 1994.*

10 *“(2) Section 101 and not this section shall gov-*
11 *ern the incidental taking of a marine mammal listed*
12 *as an endangered species or threatened species under*
13 *the Endangered Species Act of 1973.*

14 *“(3) Section 104(h) and title III and not this*
15 *section shall govern the taking of marine mammals in*
16 *the course of commercial purse seine fishing for yel-*
17 *lowfin tuna in the eastern tropical Pacific Ocean.*

18 *“(4) This section shall not govern the incidental*
19 *taking of California sea otters and shall not be*
20 *deemed to amend or repeal the Act of November 7,*
21 *1986 (Public Law 99-625; 100 Stat. 3500).*

22 *“(5) Except as provided in section 101(c), the*
23 *intentional lethal take of any marine mammal in the*
24 *course of commercial fishing operations is prohibited.*

25 *“(b) SCIENTIFIC CONSULTATION.—*

1 “(1) Not later than 60 days after the date of en-
2 actment of the Marine Mammal Protection Act
3 Amendments of 1994, the Secretary shall, in consulta-
4 tion with the Marine Mammal Commission, establish
5 independent scientific review groups representing
6 Alaska, the Pacific coast (including Hawaii), the Gulf
7 of Mexico, and the Atlantic coast consisting of indi-
8 viduals with expertise in marine mammal biology
9 and ecology, population dynamics and modeling, and
10 commercial fishing technology and practices, and rep-
11 resentatives of coastal States, for the purposes of re-
12 viewing proposed actions under this section. The
13 groups shall advise the Secretary on—

14 “(A) population estimates for those marine
15 mammal stocks taken incidental to commercial
16 fishing operations;

17 “(B) the population status and trends of
18 such stocks;

19 “(C) uncertainties and research needed re-
20 garding stock separation, abundance, or trends,
21 and factors affecting the distribution, size, or
22 productivity of the stock;

23 “(D) uncertainties and research needed re-
24 garding the species, number, ages, gender, and

1 *reproductive status of marine mammals taken*
2 *incidental to commercial fishing operations;*

3 *“(E) research needed to identify modifica-*
4 *tions in fishing gear and practices likely to re-*
5 *duce the mortality and serious injury of marine*
6 *mammals incidental to commercial fishing oper-*
7 *ations;*

8 *“(F) the potential impacts of habitat de-*
9 *struction, including marine pollution and natu-*
10 *ral environmental change, on specific marine*
11 *mammal species or stocks; and*

12 *“(G) any other issue which the Secretary or*
13 *the groups consider appropriate.*

14 *“(2) The scientific review groups established*
15 *under this subsection shall not be subject to the Fed-*
16 *eral Advisory Committee Act (5 App. U.S.C.).*

17 *“(3) Members of the scientific review groups shall*
18 *serve without compensation, but may be reimbursed*
19 *by the Secretary, upon request, for reasonable travel*
20 *costs and expenses incurred in performing their obli-*
21 *gations.*

22 *“(c) STOCK ASSESSMENTS AND DETERMINATIONS OF*
23 *STRATEGIC STOCKS.—*

24 *“(1) Not later than 60 days after the establish-*
25 *ment of the scientific review groups under subsection*

1 (b), the Secretary shall, in consultation with the sci-
2 entific review groups, prepare proposed stock assess-
3 ments of each marine mammal stock which occurs in
4 waters under the jurisdiction of the United States and
5 which is taken incidental to commercial fishing oper-
6 ations, and shall publish notice of its availability in
7 the Federal Register for public review and comment
8 for a period which shall not exceed 60 days. Each
9 proposed stock assessment shall include—

10 “(A) the area in which each stock is located
11 and, if migratory, the season of its location in
12 that area;

13 “(B) the best available estimates of mini-
14 mum population size, most likely population
15 size, stock separation, productivity, current pop-
16 ulation trend, and estimated optimum sustain-
17 able population range if available;

18 “(C) estimates of total lethal and serious in-
19 jury take from each stock by source and, for de-
20 pleted stocks, other factors that may cause the
21 further decline or impede the recovery of that
22 stock, including impacts on marine mammal
23 habitat and prey;

1 “(D) a description of the commercial fish-
2 eries that may incur incidental lethal and seri-
3 ous injury takes from each stock, including—

4 “(i) the approximate number of vessels
5 actively participating in each fishery;

6 “(ii) the best available estimates of in-
7 cidental lethal and serious injury take from
8 the stock by each fishery on an annual
9 basis;

10 “(iii) seasonal or area differences in
11 levels of such take; and

12 “(iv) the rate at which such take oc-
13 curs, based on the appropriate standard
14 unit of fishing effort, with an analysis of
15 whether the rate at which the take occurs is
16 exceeding or has achieved insignificant lev-
17 els approaching a zero mortality and seri-
18 ous injury rate;

19 “(E) the status of each stock, specifying—

20 “(i) whether the stock has been deter-
21 mined to be within its optimum sustainable
22 population range, is depleted, is listed as a
23 threatened species or endangered species
24 under the Endangered Species Act of 1973

1 *(16 U.S.C. 1531 et seq.), or is a strategic*
2 *stock; or*

3 *“(ii) that the status of the stock is un-*
4 *known;*

5 *“(F) the estimated potential biological re-*
6 *moval level for each stock and the factors used to*
7 *calculate it; and*

8 *“(G) the information or sources of informa-*
9 *tion upon which the assessment is based.*

10 *“(2) Not later than 90 days after the close of the*
11 *public comment period on a proposed stock assess-*
12 *ment, the Secretary shall publish a final stock assess-*
13 *ment and make it available to the public.*

14 *“(3) The Secretary shall review stock assessments*
15 *in accordance with this subsection—*

16 *“(A) at least annually for stocks which*
17 *are—*

18 *“(i) specified as strategic stocks in a*
19 *final stock assessment under this subsection;*

20 *“(ii) listed as a threatened species or*
21 *endangered species under the Endangered*
22 *Species Act of 1973 (16 U.S.C. 1531 et*
23 *seq.);*

24 *“(B) at least annually for stocks for which*
25 *significant new information is available; and*

1 “(C) at least once every 3 years for all other
2 stocks.

3 “(4) Nothing in this subsection shall prevent the
4 Secretary from publishing stock assessments for stra-
5 tegic stocks in an expedited fashion.

6 “(d) AUTHORIZATION TO TAKE MARINE MAMMALS.—

7 “(1) Not later than 30 days after the date of the
8 publication of the final stock assessments under sub-
9 section (c), or September 1, 1995, whichever is earlier,
10 the Secretary shall issue a general authorization and
11 implementing regulations allowing incidental, but not
12 intentional, taking of marine mammals in the course
13 of commercial fishing operations subject to the provi-
14 sions of this section. The implementing regulations
15 shall identify the fisheries in which vessels shall be
16 considered to be operating under the general author-
17 ization and shall establish additional permit require-
18 ments for fisheries that are not so identified under the
19 general authorization.

20 “(2) The Secretary shall, within 90 days after
21 the date of enactment of this section—

22 “(A) publish in the Federal Register for
23 public comment, for a period of not less than 90
24 days, any necessary changes to the Secretary’s
25 list of commercial fisheries published under sec-

tion 114(b)(1) and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement of the marine mammals and the approximate number of vessels or persons actively involved in each such fishery), that have—

“(i) frequent incidental taking of marine mammals;

“(ii) occasional incidental taking of marine mammals; or

“(iii) a remote likelihood of or no known incidental taking of marine mammals;

“(B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

“(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information

1 gathered under this Act and other relevant
2 sources and after notice and opportunity for
3 public comment, the classification of commercial
4 fisheries and other determinations required
5 under subparagraph (A) and publish in the Fed-
6 eral Register any necessary changes.

7 “(3)(A) An authorization shall be granted by the
8 Secretary in accordance with this section for a vessel
9 engaged in a commercial fishery listed under para-
10 graph (2)(A)(i) or (ii), upon receipt by the Secretary
11 of a completed registration form providing the name
12 of the vessel owner and operator, the name and de-
13 scription of the vessel, the fisheries in which it will
14 be engaged, the approximate time, duration, and loca-
15 tion of such fishery operations, and the general type
16 and nature of use of the fishing gear and techniques
17 used. Such information shall be in a readily usable
18 format that can be efficiently entered into and uti-
19 lized by an automated or computerized data process-
20 ing system. A decal or other physical evidence that
21 the authorization is current and valid shall be issued
22 by the Secretary at the time an authorization is
23 granted, and so long as the authorization remains
24 current and valid, shall be reissued annually there-
25 after.

1 “(B) No authorization may be granted under
2 this section to the owner of a vessel unless such ves-
3 sel—

4 “(i) is a vessel of the United States; or

5 “(ii) has a valid fishing permit issued by
6 the Secretary in accordance with section 204(b)
7 of the Magnuson Fishery Conservation and Man-
8 agement Act (16 U.S.C. 1824(b)).

9 “(C) Except as provided in subsection (a), an
10 authorization granted under this section shall allow
11 the incidental taking of all species and stocks of ma-
12 rine mammals to which this Act applies.

13 “(4)(A) An owner of a vessel engaged in any
14 fishery listed under paragraph (2)(A)(i) or (ii) shall,
15 in order to engage in the lawful incidental taking of
16 marine mammals in a commercial fishery—

17 “(i) have registered as required under para-
18 graph (3) with the Secretary in order to obtain
19 for each such vessel owned and used in the fish-
20 ery an authorization for the purpose of inciden-
21 tally taking marine mammals in accordance
22 with this section, except that owners of vessels
23 holding valid certificates of exemption under sec-
24 tion 114 are deemed to have registered for pur-

1 *poses of this subsection for the period during*
2 *which such registration is valid;*

3 *“(ii) ensure that a decal or such other phys-*
4 *ical evidence of a current and valid authoriza-*
5 *tion as the Secretary may require is displayed*
6 *on or is in the possession of the master of each*
7 *such vessel;*

8 *“(iii) report as required by subsection (h);*
9 *and*

10 *“(iv) comply with a take reduction plan*
11 *and emergency regulations issued under this sec-*
12 *tion.*

13 *“(B) Any owner of a vessel receiving an author-*
14 *ization under this section for any fishery listed under*
15 *paragraph (2)(A)(i) or (ii) shall, as a condition of*
16 *that authorization, take on board an observer if re-*
17 *quested to do so by the Secretary.*

18 *“(C) An owner of a vessel engaged in a fishery*
19 *listed under paragraph (2)(A)(i) or (ii) who—*

20 *“(i) fails to obtain from the Secretary an*
21 *authorization for such vessel under this section;*

22 *“(ii) fails to maintain a current and valid*
23 *authorization for such vessel; or*

24 *“(iii) fails to ensure that a decal or other*
25 *physical evidence of such authorization issued by*

1 *the Secretary is displayed on or is in possession*
2 *of the master of the vessel,*
3 *and the master of any such vessel engaged in such*
4 *fishery, shall be deemed to have violated this title, and*
5 *for violations of clauses (i) and (ii) shall be subject*
6 *to the penalties of this title, and for violations of*
7 *clause (iii) shall be subject to a fine of not more than*
8 *\$100 for each offense.*

9 “(D) *If the owner of a vessel has obtained and*
10 *maintains a current and valid authorization from the*
11 *Secretary under this section and meets the require-*
12 *ments set forth in this section, including compliance*
13 *with any regulations to implement a take reduction*
14 *plan under this section, the owner of such vessel, and*
15 *the master and crew members of the vessel, shall not*
16 *be subject to the penalties set forth in this title for the*
17 *incidental taking of marine mammals while such ves-*
18 *sel is engaged in a fishery to which the authorization*
19 *applies.*

20 “(E) *Each owner of a vessel engaged in any fish-*
21 *ery not listed under paragraph (2)(A)(i) or (ii), and*
22 *the master and crew members of such a vessel, shall*
23 *not be subject to the penalties set forth in this title*
24 *for the incidental taking of marine mammals if such*
25 *owner reports to the Secretary, in the form and man-*

1 *ner required under subsection (h), instances of inci-*
2 *dental mortality or injury of marine mammals in the*
3 *course of that fishery.*

4 *“(5) The Secretary shall suspend or revoke an*
5 *authorization granted under this section and shall not*
6 *issue a decal or other physical evidence of the author-*
7 *ization for any vessel until the owner of such vessel*
8 *complies with the reporting requirements under sub-*
9 *section (h) and such requirements to take on board an*
10 *observer under paragraph (4)(B) as are applicable to*
11 *such vessel. Previous failure to comply with the re-*
12 *quirements of section 114 shall not bar authorization*
13 *under this section for an owner who complies with the*
14 *requirements of this section. The Secretary may sus-*
15 *pend or revoke an authorization granted under this*
16 *subsection, and may not issue a decal or other phys-*
17 *ical evidence of the authorization for any vessel which*
18 *fails to comply with a take reduction plan or emer-*
19 *gency regulations issued under this section.*

20 *“(6)(A) The Secretary shall develop, in consulta-*
21 *tion with the appropriate States, affected Regional*
22 *Fishery Management Councils, and other interested*
23 *persons, the means by which the granting and admin-*
24 *istration of authorizations under this section shall be*
25 *integrated and coordinated, to the maximum extent*

1 *practicable, with existing fishery licenses, registra-*
2 *tions, and related programs.*

3 *“(B) The Secretary shall utilize newspapers of*
4 *general circulation, fishery trade associations, elec-*
5 *tronic media, and other means of advising commer-*
6 *cial fishermen of the provisions of this section and the*
7 *means by which they can comply with its require-*
8 *ments.*

9 *“(C) The Secretary is authorized to charge a fee*
10 *for the granting of an authorization under this sec-*
11 *tion. The level of fees charged under this subpara-*
12 *graph shall not exceed the administrative costs in-*
13 *curring in granting an authorization. Fees collected*
14 *under this subparagraph shall be available to the*
15 *Under Secretary of Commerce for Oceans and Atmos-*
16 *phere for expenses incurred in the granting and ad-*
17 *ministration of authorizations under this section.*

18 *“(e) TAKE REDUCTION TEAMS.—*

19 *“(1) No later than 30 days after the publication*
20 *of a final stock assessment under subsection (c), the*
21 *Secretary shall establish take reduction teams for*
22 *those marine mammal species or stocks which are*
23 *specified as strategic stocks in final stock assessments*
24 *under subsection (c) and publish notice of that estab-*
25 *lishment in the Federal Register. The Secretary shall*

1 *establish take reduction teams for stocks which are not*
2 *specified as strategic stocks in final stock assessments*
3 *under subsection (c), as the Secretary considers nec-*
4 *essary in accordance with subsection (f).*

5 *“(2) The Secretary may request a take reduction*
6 *team to consider and provide advice on measures nec-*
7 *essary to reduce incidental lethal takes from a marine*
8 *mammal stock whose range extends over more than 1*
9 *region, or on multiple marine mammal stocks within*
10 *a region.*

11 *“(3) Members of take reduction teams shall have*
12 *expertise regarding the conservation or biology of the*
13 *marine mammal species which the incidental take*
14 *plan will address, or the fishing practices involved in*
15 *the incidental lethal taking of such species. Members*
16 *shall include representatives of Federal agencies, each*
17 *coastal State which has fisheries which interact with*
18 *the species or stock, appropriate Regional Fishery*
19 *Management Councils, interstate fisheries commis-*
20 *sions, academic and scientific organizations, environ-*
21 *mental groups, all commercial and recreational fish-*
22 *eries groups and gear types which incidentally take*
23 *the species or stock, Alaska Native organizations or*
24 *Indian tribal organizations, and others as the Sec-*
25 *retary deems appropriate. Take reduction teams shall,*

1 to the maximum extent practicable, consist of an eq-
2 uitable balance among representatives of resource user
3 interests and nonuser interests.

4 “(4) Take reduction teams shall not be subject to
5 the Federal Advisory Committee Act (5 App. U.S.C.).
6 Meetings of take reduction teams shall be open to the
7 public, and prior notice of meetings shall be made
8 public in a timely fashion.

9 “(5) Members of take reduction teams shall serve
10 without compensation. Members of take reduction
11 teams who are not Federal or State government em-
12 ployees shall be reimbursed by the Secretary, upon re-
13 quest, for reasonable travel costs and expenses in-
14 curred in performing their obligations.

15 “(f) TAKE REDUCTION PLANS.—

16 “(1) The Secretary shall issue take reduction
17 plans for marine mammal stocks in accordance with
18 this subsection. The immediate goal of a take reduc-
19 tion plan shall be reduce, within 1 year of its imple-
20 mentation, the lethal take or serious injury of marine
21 mammals incidentally taken in the course of commer-
22 cial fishing operations to levels less than the potential
23 biological removal level established in this section. The
24 long-term goal of the plan shall be to reduce, within
25 5 years of its implementation, the lethal take or seri-

1 ous injury of marine mammals incidentally taken in
2 the course of commercial fishing operations to insig-
3 nificant levels approaching a zero mortality and seri-
4 ous injury rate, taking into account the economics of
5 the fishery, the availability of existing technology,
6 and existing State or regional fishery management
7 plans.

8 “(2) 2 years after the issuance of the general au-
9 thorization under subsection (d), the Secretary shall
10 review the progress, by fishery, toward reducing inci-
11 dental lethal takes and serious injury of marine
12 mammals in the course of commercial fishing oper-
13 ations to insignificant levels approaching a zero mor-
14 tality and serious injury rate. The Secretary shall
15 submit to the Committee on Commerce, Science, and
16 Transportation of the Senate and the Committee on
17 Merchant Marine and Fisheries of the House of Rep-
18 resentatives a report setting forth the results of such
19 review within 1 year after commencement of the re-
20 view.

21 “(3) The Secretary shall give priority to the de-
22 velopment of take reduction plans for marine mam-
23 mal stocks or species—

1 “(A) which are specified as strategic stocks
2 and which are incidentally taken in fisheries
3 listed under subsection (d)(2)(A)(i);

4 “(B) which are specified as strategic stocks
5 and which are incidentally taken in fisheries
6 listed under subsection (d)(2)(A)(ii); and

7 “(C) which are not specified as strategic
8 stocks but which the Secretary finds are ap-
9 proaching strategic stock status.

10 “(4) Each take reduction plan shall include—

11 “(A) a review of the information in the
12 final stock assessment published under subsection
13 (c) and any new information;

14 “(B) an estimate of the total number and,
15 if possible, age and gender, of animals from the
16 stock that are being incidentally lethally taken
17 each year during the course of commercial fish-
18 ing operations, by fishery;

19 “(C) recommended regulatory or voluntary
20 measures for the reduction of incidental lethal
21 takes; and

22 “(D) recommended dates for achieving the
23 specific objectives of the plan.

24 “(5) Recommended take reduction plans devel-
25 oped by a take reduction team under this subsection

1 *for submission to the Secretary shall be developed by*
2 *consensus. In the event that a consensus cannot be*
3 *reached, the team shall advise the Secretary on the*
4 *range of possibilities considered by the team, and the*
5 *views of both the majority and the minority. The Sec-*
6 *retary shall then propose a take reduction plan con-*
7 *sistent with the provisions of this subsection.*

8 *“(6) In the case of those marine mammal species*
9 *or stocks which are specified as strategic stocks in*
10 *final stock assessments under subsection (c), the fol-*
11 *lowing provisions apply:*

12 *“(A) Not later than 6 months after the date*
13 *of establishment of a take reduction team for that*
14 *stock, the take reduction team shall recommend*
15 *a take reduction plan to the Secretary, consistent*
16 *with the other provisions of this subsection.*

17 *“(B) The Secretary shall consider the rec-*
18 *ommended take reduction plan and, not later*
19 *than 60 days after the submission of the rec-*
20 *ommended take reduction plan, the Secretary*
21 *shall publish in the Federal Register the rec-*
22 *ommended take reduction plan, any changes pro-*
23 *posed by the Secretary along with the reason for*
24 *the proposed changes, and proposed implement-*
25 *ing regulations, for public review and comment.*

1 “(C) If the take reduction team does not rec-
2 ommend a take reduction plan to the Secretary
3 within 6 months, the Secretary shall, not later
4 than 8 months after the establishment of the take
5 reduction team, publish in the Federal Register
6 a proposed take reduction plan and proposed im-
7 plementing regulations, for public review and
8 comment.

9 “(D) Not later than 60 days after the close
10 of the comment period required under this para-
11 graph, the Secretary shall issue a final take re-
12 duction plan and implementing regulations, con-
13 sistent with the other provisions of this sub-
14 section. If the Secretary rejects or significantly
15 modifies a plan recommended under subpara-
16 graph (B), the Secretary shall notify the take re-
17 duction team and specify in writing the reasons
18 for the rejection or modification.

19 “(E) The Secretary and the take reduction
20 team shall meet every 6 months to monitor the
21 implementation of the take reduction plan until
22 such time as the Secretary determines that meet-
23 ings are no longer necessary.

24 “(7) In the case of those marine mammal species
25 or stocks which are not specified as strategic stocks in

1 *final stock assessments under subsection (c), the fol-*
2 *lowing provisions apply:*

3 “(A) *Within 11 months after the establish-*
4 *ment of the take reduction team, the team shall*
5 *recommend a take reduction plan for that stock*
6 *to the Secretary, consistent with the other provi-*
7 *sions of this subsection.*

8 “(B) *The Secretary shall consider the rec-*
9 *ommended take reduction plan and, not later*
10 *than 60 days after the submission of the rec-*
11 *ommended take reduction plan, the Secretary*
12 *shall publish in the Federal Register the rec-*
13 *ommended take reduction plan, any changes pro-*
14 *posed by the Secretary along with the reason for*
15 *the proposed changes, and proposed implement-*
16 *ing regulations for public review and comment.*

17 “(C) *If the take reduction team does not rec-*
18 *ommend a take reduction plan to the Secretary*
19 *within 11 months, the Secretary shall, not later*
20 *than 13 months after the establishment of the*
21 *take reduction team, publish in the Federal Reg-*
22 *ister a proposed take reduction plan and imple-*
23 *menting regulations for public review and com-*
24 *ment.*

1 “(D) Not later than 60 days after the close
2 of the comment period required under this para-
3 graph, the Secretary shall issue a final take re-
4 duction plan and implementing regulations, con-
5 sistent with the other provisions of this sub-
6 section. If the Secretary rejects or significantly
7 modifies a plan recommended under subpara-
8 graph (B), the Secretary shall notify the take re-
9 duction team and specify in writing the reasons
10 for the rejection or modification.

11 “(E) The Secretary and the take reduction
12 team shall meet on an annual basis to monitor
13 the implementation of the take reduction plan
14 until such time as the Secretary determines that
15 meetings are no longer necessary.

16 “(8) If a take reduction plan does not achieve its
17 immediate goal of reducing incidental lethal takes in
18 the course of commercial fishing operations to levels
19 less than the potential biological removal level within
20 1 year, or its long-term goal of reducing incidental le-
21 thal takes in the course of commercial fishing oper-
22 ations to insignificant levels approaching a zero mor-
23 tality and serious injury rate within 5 years, the Sec-
24 retary shall, in consultation with the take reduction
25 team, amend the take reduction plan and implement-

1 *ing regulations as necessary to achieve the goal, con-*
2 *sistent with the procedures in this subsection for the*
3 *issuance of such plans and regulations.*

4 *“(9) In implementing a take reduction plan is-*
5 *sued pursuant to this subsection, the Secretary may*
6 *promulgate regulations which include measures*
7 *which—*

8 *“(A) establish fishery-specific limits on inci-*
9 *dental lethal takes;*

10 *“(B) restrict commercial fisheries by time*
11 *or area;*

12 *“(C) require the use of alternative gear tech-*
13 *niques or technology, and encourage the develop-*
14 *ment of such gear or technology;*

15 *“(D) educate commercial fishermen and oth-*
16 *ers on the importance and means of reducing in-*
17 *cidental lethal takes of marine mammals; and*

18 *“(E) in promulgating such regulations, the*
19 *Secretary shall conform such regulations, to the*
20 *maximum extent practicable, with State or re-*
21 *gional fishery management plans.*

22 *“(10) If the Secretary finds that a significant*
23 *level of incidental lethal taking of a marine mammal*
24 *stock is occurring within a fishery within the juris-*
25 *isdiction of a State, the Secretary and take reduction*

1 *team shall consult with State fishery managers to de-*
2 *velop a take reduction plan for that fishery.*

3 *“(g) EMERGENCY REGULATIONS.—(1) If the Secretary*
4 *finds that the incidental lethal take and serious injury of*
5 *marine mammals from commercial fisheries is having, or*
6 *is likely to have, an immediate and significant adverse im-*
7 *pact on a stock or species, the Secretary shall take actions*
8 *as follows:*

9 *“(A) In the case of a stock or species for which*
10 *a take reduction plan is in effect, the Secretary*
11 *shall—*

12 *“(i) prescribe emergency regulations that,*
13 *consistent with such plan to the maximum extent*
14 *practicable, reduce incidental lethal take and se-*
15 *rious injury in that fishery; and*

16 *“(ii) approve and implement, on an expe-*
17 *dited basis, any amendments to such plan that*
18 *are recommended by the take reduction team to*
19 *address such adverse impact.*

20 *“(B) In the case of a stock or species for which*
21 *a take reduction plan is being developed, the Sec-*
22 *retary shall—*

23 *“(i) prescribe emergency regulations to re-*
24 *duce such incidental lethal take and serious in-*
25 *jury in that fishery; and*

1 “(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.
2
3
4

5 “(C) In the case of a stock or species for which
6 a take reduction plan does not exist and is not being
7 developed, or in the case of a commercial fishery listed
8 under subsection (d)(1)(A)(iii) which the Secretary
9 believes may be contributing to such adverse impact,
10 the Secretary shall—

11 “(i) prescribe emergency regulations to reduce such incidental lethal take and serious injury in that fishery, to the extent necessary to
12
13 mitigate such adverse impact;
14

15 “(ii) immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should
16
17 be established; and
18
19

20 “(iii) may, where necessary to address such
21 adverse impact, place observers on vessels in a
22 commercial fishery listed under subsection
23 (d)(2)(A)(iii), if the Secretary has reason to believe such vessels may be causing the incidental
24 lethal take and serious injury to marine mam-
25

1 *mals from such stock and the vessel owner agrees*
2 *to take an observer on board.*

3 *“(2) Prior to taking action under paragraph (1)(A),*
4 *(B), or (C), the Secretary shall consult with the Marine*
5 *Mammal Commission, all appropriate Regional Fishery*
6 *Management Councils, State fishery managers, and the ap-*
7 *propriate take reduction team (if established).*

8 *“(3) Emergency regulations prescribed under this sub-*
9 *section—*

10 *“(A) shall be published in the Federal Register,*
11 *together with an explanation thereof;*

12 *“(B) shall remain in effect for not more than*
13 *180 days or until the end of the applicable commer-*
14 *cial fishing season, whichever is earlier; and*

15 *“(C) may be terminated by the Secretary at an*
16 *earlier date by publication in the Federal Register of*
17 *a notice of termination, if the Secretary determines*
18 *that the reasons for emergency regulations no longer*
19 *exist.*

20 *“(h) REPORTING REQUIREMENT.—The owner or oper-*
21 *ator of a commercial fishing vessel subject to this Act shall*
22 *report all incidental mortality and serious injury of marine*
23 *mammals in the course of commercial fishing operations*
24 *to the Secretary by mail or other means acceptable to the*
25 *Secretary within 48 hours after the end of each fishing trip*

1 *on a standard form to be developed by the Secretary under*
2 *this section. Such form shall be readily usable by an auto-*
3 *mated or computerized data processing system and shall re-*
4 *quire the vessel owner or operator to provide the following:*

5 “(1) *The vessel name, and Federal, State, or*
6 *tribal registration numbers of the registered vessel.*

7 “(2) *The name and address of the vessel owner*
8 *or operator.*

9 “(3) *The name and description of the fishery.*

10 “(4) *The species of each marine mammal inci-*
11 *dentally killed or seriously injured, and the date,*
12 *time, and approximate geographic location of such oc-*
13 *currence.*

14 “(i) *MONITORING OF INCIDENTAL TAKES.—*

15 “(1) *The Secretary shall establish a program to*
16 *monitor incidental lethal takes and serious injury of*
17 *marine mammals during the course of commercial*
18 *fishing operations. The purposes of the monitoring*
19 *program shall be to—*

20 “(A) *obtain statistically reliable estimates*
21 *of incidental lethal takes and serious injury;*

22 “(B) *determine the reliability of reports of*
23 *incidental lethal takes and serious injury under*
24 *subsection (h); and*

1 “(C) identify changes in fishing methods or
2 technology that may increase or decrease inci-
3 dental lethal takes.

4 “(2) Pursuant to paragraph (1), the Secretary
5 may place observers on board vessels as necessary,
6 subject to the provisions of this section. Observers
7 may, among other tasks—

8 “(A) record incidental mortality or by-catch
9 of other nontarget species;

10 “(B) record numbers of marine mammals
11 sighted; and

12 “(C) perform other scientific investigations.

13 “(3) In determining the distribution of observers
14 among fisheries and vessels within a fishery, the Sec-
15 retary shall be guided by the following standards:

16 “(A) The requirement to obtain statistically
17 reliable information.

18 “(B) The requirement that assignment of
19 observers is fair and equitable among fisheries
20 and among vessels in a fishery.

21 “(C) The requirement that no individual
22 person or vessel, or group of persons or vessels,
23 be subject to excessive or overly burdensome ob-
24 server coverage.

1 “(D) To the extent practicable, the need to
2 minimize costs and avoid duplication.

3 “(4) To the extent practicable, the Secretary
4 shall allocate observers among fisheries consistent
5 with the following priorities:

6 “(A) First, fisheries that incidentally le-
7 thally take or seriously injure marine mammals
8 from stocks that are depleted because of their list-
9 ing as an endangered species or threatened spe-
10 cies under the Endangered Species Act of 1973.

11 “(B) Second, fisheries that incidentally le-
12 thally take or seriously injure marine mammals
13 from stocks which are specified as strategic stocks
14 in final stock assessments under subsection (c).

15 “(C) Third, fisheries that incidentally le-
16 thally take or seriously injure marine mammals
17 from stocks for which the level of incidental le-
18 thal takes is unknown but is suspected to be
19 high.

20 “(D) Fourth, species not described in sub-
21 paragraph (A), (B), or (C).

22 “(5) The Secretary may establish an alternative
23 observer program to provide statistically reliable in-
24 formation on the species and number of marine mam-
25 mals incidentally taken in the course of commercial

1 *fishing operations. The alternative observer program*
2 *may include direct observation of fishing activities*
3 *from vessels, airplanes, or points on shore.*

4 “(6) *The Secretary is not required to place an*
5 *observer on a vessel in a fishery if the Secretary finds*
6 *that—*

7 “(A) *in a situation in which harvesting ves-*
8 *sels are delivering fish to a processing vessel and*
9 *the catch is not taken on board the harvesting*
10 *vessel, statistically reliable information can be*
11 *obtained from an observer on board the process-*
12 *ing vessel to which the fish are delivered;*

13 “(B) *the facilities on a vessel for quartering*
14 *of an observer, or for carrying out observer func-*
15 *tions, are so inadequate or unsafe that the health*
16 *or safety of the observer or the safe operation of*
17 *the vessel would be jeopardized; or*

18 “(C) *for reasons beyond the control of the*
19 *Secretary, an observer is not available.*

20 “(7) *Any proprietary information collected*
21 *under this subsection shall be confidential and shall*
22 *not be disclosed except—*

23 “(A) *to Federal employees whose duties re-*
24 *quire access to such information;*

1 “(B) to State or tribal employees pursuant
2 to an agreement with the Secretary that prevents
3 public disclosure of the identity or business of
4 any person;

5 “(C) when required by court order; or

6 “(D) in the case of scientific information
7 involving fisheries, to employees of Regional
8 Fishery Management Councils who are respon-
9 sible for fishery management plan development
10 and monitoring.

11 “(8) The Secretary shall prescribe such proce-
12 dures as may be necessary to preserve such confiden-
13 tiality, except that the Secretary shall release or make
14 public upon request any such information in aggre-
15 gate, summary, or other form which does not directly
16 or indirectly disclose the identity or business of any
17 person.

18 “(j) *PENALTIES*.—Any person who violates the provi-
19 sions of this section shall be subject to the provisions of sec-
20 tions 105, 106, and 107 as the Secretary considers appro-
21 priate.

22 “(k) *ASSISTANCE*.—The Secretary shall provide assist-
23 ance to Regional Fishery Management Councils, States,
24 interstate fishery commissions, and Indian tribal organiza-
25 tions in meeting the goal of reducing incidental lethal takes

1 *and serious injury to insignificant levels approaching a*
 2 *zero mortality and serious injury rate.*

3 “(l) *CONTRIBUTIONS.*—*For purposes of carrying out*
 4 *this section, the Secretary may accept, solicit, receive, hold,*
 5 *administer, and use gifts, devises, and bequests.*

6 “(m) *AUTHORIZATION OF APPROPRIATIONS.*—*There*
 7 *are authorized to be appropriated to the Secretary of Com-*
 8 *merce for carrying out this section \$15,000,000 for each of*
 9 *fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.*

10 “(n) *SECTION 101(b).*—*Nothing in this section shall*
 11 *affect section 101(b).*

12 “(o) *CONSULTATION WITH SECRETARY OF THE INTE-*
 13 *RIOR.*—*The Secretary shall consult with the Secretary of*
 14 *the Interior prior to taking actions or making determina-*
 15 *tions under this section that affect or relate to species or*
 16 *population stocks of marine mammals for which the Sec-*
 17 *retary of the Interior is responsible under this title.*

18 “(p) *DEFINITIONS.*—*As used in this section—*

19 “(1) *the term ‘fishery’ has the same meaning as*
 20 *it does in section 3 of the Magnuson Fishery Con-*
 21 *servation and Management Act (16 U.S.C. 1802);*

22 “(2) *the term ‘Secretary’ means the Secretary of*
 23 *Commerce; and*

24 “(3) *the term ‘vessel of the United States’ has the*
 25 *same meaning as it does in section 3 of the Magnuson*

1 *Fishery Conservation and Management Act (16*
2 *U.S.C. 1802).*

3 ***“SEC. 119. MARINE MAMMAL COOPERATIVE AGREEMENTS***
4 ***IN ALASKA.***

5 “(a) *IN GENERAL.*—*The Secretary may enter into co-*
6 *operative agreements with Alaska Native organizations to*
7 *conserve marine mammals and provide comanagement of*
8 *subsistence use by Alaska Natives.*

9 “(b) *GRANTS.*—*Agreements entered into under this sec-*
10 *tion may include grants to Alaska Native organizations for,*
11 *among other purposes—*

12 “(1) *collection and analysis of data on marine*
13 *mammal populations;*

14 “(2) *monitoring the harvest of marine mammals*
15 *for subsistence use;*

16 “(3) *participating in marine mammal research*
17 *conducted by the Federal Government, States, aca-*
18 *demic institutions, and private organizations; and*

19 “(4) *developing marine mammal co-management*
20 *structures with Federal and State agencies.*

21 “(c) *EFFECT OF JURISDICTION.*—

22 “(1) *Nothing in this section is intended or shall*
23 *be construed as authorizing any expansion or change*
24 *in the respective jurisdiction of Federal, State, or*
25 *tribal governments over fish and wildlife resources.*

1 “(2) Nothing in this section is intended or shall
2 be construed to alter in any respect the existing polit-
3 ical or legal status of Alaska Natives, or the govern-
4 mental or jurisdictional status of Alaska Native com-
5 munities or Alaska Native entities.

6 “(d) *AUTHORIZATION OF APPROPRIATIONS.*—There
7 are authorized to be appropriated for carrying out this sec-
8 tion—

9 “(1) \$1,500,000 to the Secretary of Commerce for
10 each of fiscal years 1994, 1995, 1996, 1997, 1998, and
11 1999; and

12 “(2) \$1,000,000 to the Secretary of the Interior
13 for each of fiscal years 1994, 1995, 1996, 1997, 1998,
14 and 1999.”.

15 (b) CLERICAL AMENDMENT.—The table of contents in
16 the first section, as amended by section 14(b), is amended
17 by adding at the end the following:

"Sec. 118. Taking of marine mammals incidental to commercial fishing operations.

"Sec. 119. Marine mammal cooperative agreements in Alaska."

18 **SEC. 10. PINNIPED TASK FORCE; MANAGEMENT OF CALI-**
19 **FORNIA SEA LIONS AND PACIFIC HARBOR**
20 **SEALS.**

21 (a) *TASK FORCE*.—Section 104 (16 U.S.C. 1374) is
22 amended by adding at the end the following:

23 “(i)(1) No later than 90 days after the date of enact-
24 ment of the Marine Mammal Protection Act Amendments

1 of 1994, the Secretary, in consultation with the Marine
2 Mammal Commission, shall establish a Pinniped-Fishery
3 Interaction Task Force (in this subsection referred to as the
4 “Task Force”) to advise the Secretary on management prac-
5 tices regarding seals and sea lions interacting in a dan-
6 gerous or damaging manner with fishery stocks.

7 “(2) The Task Force shall consist of individuals des-
8 ignated by the Secretary, including—

9 “(A) employees of the Department of Commerce,

10 “(B) scientists knowledgeable in pinniped biol-
11 ogy and ecology,

12 “(C) representatives of conservation organiza-
13 tions, and

14 “(D) representatives of affected sectors of the fish-
15 ing industry, Indian treaty tribes, States, and other
16 interests as the Secretary considers appropriate.

17 “(3) The Task Force shall advise the Secretary regard-
18 ing—

19 “(A) the level of impact of pinniped stocks on the
20 decline or recovery of threatened or endangered
21 salmonids and other declining fish stocks;

22 “(B) the level of impact of pinniped stocks on
23 other fishery resources;

1 “(C) other factors affecting the decline or recov-
2 ery of threatened or endangered salmonids and other
3 declining fish stocks;

4 “(D) available alternatives to effectively mitigate
5 negative impacts, including alternative technologies,
6 relocation of animals, or nonlethal deterrence of ani-
7 mals, and the estimated cost of such alternatives;

8 “(E) for negative impacts for which no mitigat-
9 ing alternatives are known, research to identify such
10 alternatives; and

11 “(F) limited intentional lethal takes of
12 pinnipeds.

13 “(4) The Secretary shall establish within the Task
14 Force a special committee to advise the Secretary on man-
15 agement practices regarding seals interacting in a dan-
16 gerous or damaging manner with aquaculture resources in
17 the Gulf of Maine. No later than 2 years from the date of
18 enactment, the Secretary shall submit to the Committee on
19 Merchant Marine and Fisheries of the House of Representa-
20 tives and the Committee on Commerce, Science, and Trans-
21 portation of the Senate a report containing recommended
22 available alternatives to mitigate such interactions.

23 “(5)(A) Any State may petition the Secretary to au-
24 thorize the lethal removal of individually identifiable
25 pinnipeds which are having a significant negative impact

1 *on the decline or recovery of salmonid fishery stocks which*
2 *have been listed as threatened species or endangered species*
3 *under the Endangered Species Act of 1973 or which the Sec-*
4 *retary finds are approaching endangered species or threat-*
5 *ened species status (as those terms are defined in that Act).*
6 *Such authority shall be granted for periods of 1 to 3 years.*
7 *Additional authorizations shall be dependent upon the suc-*
8 *cess of the action. Within 30 days after receiving a petition,*
9 *the Secretary shall consult with the Task Force to determine*
10 *whether the petition has produced sufficient evidence to*
11 *warrant further investigation. If further investigation is*
12 *considered necessary, the Secretary shall publish a notice*
13 *in the Federal Register requesting public comment.*

14 “(B) Not later than 60 days after the close of the public
15 comment period for a petition under subparagraph (A), the
16 Task Force shall recommend to the Secretary whether to au-
17 thorize the lethal removal that is the subject of the petition.
18 If authorization is recommended, the Task Force shall also
19 recommend—

20 “(i) a method of removal;

21 “(ii) criteria for evaluating the success of the ac-
22 tion; and

23 “(iii) a duration for the authority.

1 “(C) If authorization is not recommended, the Task
2 Force shall also recommend nonlethal alternatives, if appro-
3 priate.

4 “(D) Not later than 30 days after the receipt of rec-
5 ommendations from the Task Force, the Secretary shall ei-
6 ther approve or deny the petition for lethal removal. If ap-
7 proved, implementation shall occur as soon as practicable.
8 Lethal removal shall be performed by State agencies or
9 qualified individuals under contract to such agencies, in
10 consultation with the Secretary.

11 “(6) The costs of lethal removal shall be borne in equal
12 amounts by the Secretary and the State or States having
13 fishery resources that have been affected.

14 “(7) Following lethal removal, carcasses or parts of
15 carcasses shall be made available for bona fide research or
16 educational purposes upon request.

17 “(8) The Secretary shall not approve under this sub-
18 section lethal removal for any pinniped from a species or
19 stock that is listed as a threatened species or endangered
20 species under the Endangered Species Act of 1973, otherwise
21 depleted, or specified as a strategic stock in a final stock
22 assessment under section 118(c).”.

23 (b) MANAGEMENT OF CALIFORNIA SEA LIONS AND PA-
24 CIFIC HARBOR SEALS.—

1 (1) *COOPERATIVE AGREEMENT.*—*The Secretary*
2 *of Commerce shall enter into negotiations with the*
3 *States of Washington, Oregon, and California to es-*
4 *tablish a cooperative agreement for the management*
5 *of California sea lion and Pacific harbor seal popu-*
6 *lations in those States. The purposes of the coopera-*
7 *tive agreement shall be to—*

8 (A) *determine whether California sea lions*
9 *and Pacific harbor seals are having a significant*
10 *negative impact on the recovery of fishery stocks*
11 *in those States;*

12 (B) *determine the broader impacts of grow-*
13 *ing populations of California sea lions and Pa-*
14 *cific harbor seals on the coastal ecosystems of*
15 *Washington, Oregon, and California; and*

16 (C) *develop a plan to—*

17 (i) *reduce, to the extent practicable,*
18 *negative impacts referred to in subpara-*
19 *graph (A); and*

20 (ii) *mitigate impacts referred to in*
21 *subparagraph (B).*

22 (2) *DEVELOPMENT AND REVIEW OF DRAFT*
23 *PLAN.*—*No later than 12 months after the date of the*
24 *enactment of this Act, the Secretary of Commerce*
25 *shall develop a draft of a plan described in paragraph*

1 (1)(C) and submit it for review by the Marine Mam-
2 mal Commission, independent scientists with exper-
3 tise in marine mammal biology and management,
4 representatives of national environmental organiza-
5 tions, and other interested persons determined by the
6 Secretary.

7 (3) SUBMISSION OF PLAN TO CONGRESS.—No
8 later than 18 months after the date of the enactment
9 of this Act, the Secretary of Commerce shall submit
10 to the Committee on Merchant Marine and Fisheries
11 of the House of Representatives and the Committee on
12 Commerce, Science, and Transportation of the Sen-
13 ate—

14 (A) a plan described in paragraph (1)(C);

15 and

16 (B) a report containing—

17 (i) responses of the Secretary to com-
18 ments received from the review required by
19 paragraph (2); and

20 (ii) an explanation of any provisions
21 of the plan with which any of the States of
22 Washington, Oregon, and California do not
23 agree.

24 (4) CONSIDERATION OF OTHER FACTORS.—Any
25 plan under this subsection shall take into account, in

1 *addition to California sea lions and Pacific harbor*
2 *seals, other factors that are slowing or impeding the*
3 *recovery of fishery stocks or adversely affecting the*
4 *coastal ecosystems of Washington, Oregon, and Cali-*
5 *fornia.*

6 (5) *NO LEGAL EFFECT.*—*A plan under this sub-*
7 *section shall have no force or effect except as provided*
8 *by a law enacted after the date the plan is submitted*
9 *to the Congress under paragraph (3).*

10 ***SEC. 11. MARINE ECOSYSTEM PROTECTION.***

11 *Section 110 (16 U.S.C. 1380) is amended by striking*
12 *subsection (c) and inserting the following:*

13 “(c)(1) *No later than 1 year after the date of enactment*
14 *of the Marine Mammal Protection Act Amendments of*
15 *1994, the Secretary of Commerce shall convene a regional*
16 *workshop for the Gulf of Maine to assess human-caused fac-*
17 *tors affecting the health and stability of that marine eco-*
18 *system, of which marine mammals are a part. The work-*
19 *shop shall be conducted in consultation with the Marine*
20 *Mammal Commission, the adjacent coastal States, individ-*
21 *uals with expertise in marine mammal biology and ecology,*
22 *representatives from environmental organizations, the fish-*
23 *ing industry, and other appropriate persons. The goal of*
24 *the workshop shall be to identify such factors, and to rec-*
25 *ommend a program of research and management to restore*

1 *or maintain that marine ecosystem and its key components*
2 *that—*

3 “(A) *protects and encourages marine mammals*
4 *to develop to the greatest extent feasible commensurate*
5 *with sound policies of resource management;*

6 “(B) *has as the primary management objective*
7 *the maintenance of the health and stability of the ma-*
8 *rine ecosystems;*

9 “(C) *ensures the fullest possible range of manage-*
10 *ment options for future generations; and*

11 “(D) *permits nonwasteful, environmentally*
12 *sound development of renewable and nonrenewable re-*
13 *sources.*

14 “(2) *On or before December 31, 1995, the Secretary*
15 *of Commerce shall submit to the Committee on Merchant*
16 *Marine and Fisheries of the House of Representatives and*
17 *the Committee on Commerce, Science, and Transportation*
18 *of the Senate a report containing the results of the workshop*
19 *under this subsection, proposed regulatory or research ac-*
20 *tions, and recommended legislative action.*

21 “(d)(1) *The Secretary of Commerce, in consultation*
22 *with the Secretary of the Interior, the Marine Mammal*
23 *Commission, the State of Alaska, and Alaska Native organi-*
24 *zations, shall, not later than 180 days after the date of en-*
25 *actment of the Marine Mammal Protection Act Amend-*

1 ments of 1994, undertake a scientific research program to
2 monitor the health and stability of the Bering Sea marine
3 ecosystem and to resolve uncertainties concerning the causes
4 of population declines of marine mammals, sea birds, and
5 other living resources of that marine ecosystem. The pro-
6 gram shall address the research recommendations developed
7 by previous workshops on Bering Sea living marine re-
8 sources, and shall include research on subsistence uses of
9 such resources and ways to provide for the continued oppor-
10 tunity for such uses.

11 “(2) To the maximum extent practicable, the research
12 program undertaken pursuant to subsection (d)(1) shall be
13 conducted in Alaska. The Secretary shall utilize, where ap-
14 propriate, traditional local knowledge and may contract
15 with a qualified Alaska Native organization to conduct such
16 research.

17 “(3) The Secretary of Commerce, the Secretary of the
18 Interior, and the Commission shall address the status and
19 findings of the research program in their annual reports
20 to Congress required by sections 103(f) and 204 of this
21 Act.”.

22 **SEC. 12. TREATY RIGHTS.**

23 Nothing in these amendments alters or is intended to
24 alter any treaties between the United States and Indian
25 tribes.

1 **SEC. 13. TRANSITION RULE.**

2 Section 114(a)(1) of the Marine Mammal Protection
3 Act (16 U.S.C. 1383(a)(1)) is amended by striking “April
4 1, 1994,” and inserting “on the effective date of regulations
5 prescribed under section 118,”.

6 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) DEPARTMENT OF COMMERCE.—Title I is amended
8 by inserting after section 115 the following:

9 **“SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

10 “(a) SECRETARY OF COMMERCE.—There are author-
11 ized to be appropriated to the Secretary of Commerce for
12 carrying out functions and responsibilities under title I and
13 title IV, other than under section 118, \$6,636,000 for fiscal
14 year 1994, \$7,502,000 for fiscal year 1995, \$8,402,000 for
15 fiscal year 1996, \$9,338,000 for fiscal year 1997,
16 \$10,311,000 for fiscal year 1998, and \$11,000,000 for fiscal
17 year 1999.

18 “(b) SECRETARY OF THE INTERIOR.—There are au-
19 thorized to be appropriated to the Secretary of the Interior
20 for carrying out functions and responsibilities under title
21 I, \$8,000,000 for fiscal year 1994, \$8,600,000 for fiscal year
22 1995, \$9,000,000 for fiscal year 1996, \$9,400,000 for fiscal
23 year 1997, \$9,900,000 for fiscal year 1998, and \$10,500,000
24 for fiscal year 1999.”.

1 (b) *CLERICAL AMENDMENT.*—*The table of contents in*
2 *the first section is amended by inserting after the item relat-*
3 *ing to section 115 the following:*

“Sec. 116. Authorization of appropriations.”.

4 **SEC. 15. DEFINITIONS.**

5 *Section 3 (16 U.S.C. 1362) is amended—*

6 (1) *in paragraph (13) by inserting “harm,” be-*
7 *fore “harass” each place it appears; and*

8 (2) *by adding at the end the following:*

9 “(18)(A) *The term ‘harassment’ means any act*
10 *of approach, pursuit, torment, or annoyance which—*

11 “(i) *has the potential to harm a marine*
12 *mammal or marine mammal stock in the wild;*
13 *or*

14 “(ii) *has the potential to disturb a marine*
15 *mammal or marine mammal stock in the wild*
16 *by causing disruption of behavioral patterns, in-*
17 *cluding, but not limited to, migration, respira-*
18 *tion, nursing, breeding, feeding, or sheltering.*

19 “(B) *The term ‘Level A harassment’ means har-*
20 *assment described in subparagraph (A)(i).*

21 “(C) *The term ‘Level B harassment’ means har-*
22 *assment described in subparagraph (A)(ii).*

23 “(19) *The term ‘harm’ means an act which is*
24 *likely to kill or injure a marine mammal, signifi-*
25 *cantly reduce its reproductive potential, or result in*

1 *habitat modification or degradation that is likely to*
2 *significantly impair essential behavioral patterns.*

3 *“(20) The term ‘strategic stock’ means a marine*
4 *mammal population or stock—*

5 *“(A) for which the level of direct human-*
6 *caused mortality exceeds the potential biological*
7 *removal level; or*

8 *“(B) which, based on the best available sci-*
9 *entific information, is declining and is likely to*
10 *be listed as a threatened species under the En-*
11 *dangered Species Act of 1973 within the foresee-*
12 *able future.*

13 *“(21) The term ‘potential biological removal*
14 *level’ means the maximum number of animals, not*
15 *including natural mortalities, that may be removed*
16 *from a marine mammal population or stock without*
17 *affecting that population’s or stock’s ability to reach*
18 *or maintain its optimum sustainable population. The*
19 *potential biological removal level is the product of the*
20 *following factors:*

21 *“(A) The best available minimum popu-*
22 *lation estimate of the population or stock.*

23 *“(B) One-half the maximum theoretical or*
24 *estimated net productivity rate of the population*
25 *or stock.*

1 “(C) A recovery factor of between 0.1 and
2 1.0.

3 “(22) The term ‘Regional Fishery Management
4 Council’ means a Regional Fishery Management
5 Council established under section 302 of the Magnu-
6 son Fishery Conservation and Management Act.

7 “(23) The term ‘bona fide research’ means sci-
8 entific research on marine mammals, the results of
9 which—

10 “(A) likely would be accepted for publica-
11 tion in a referred scientific journal;

12 “(B) are likely to contribute to the basic
13 knowledge of marine mammal biology or ecology;
14 or

15 “(C) are likely to identify, evaluate, or re-
16 solve conservation problems.

17 “(24) The term ‘Alaska Native organization’
18 means a group designated by law or formally char-
19 tered which represents or consists of Indians, Aleuts,
20 or Eskimos residing in Alaska.”.

21 **SEC. 16. SCRIMSHAW EXEMPTIONS.**

22 Notwithstanding any other provision of law, any valid
23 certificate of exemption renewed by the Secretary (or
24 deemed to be renewed) under section 10(f)(8) of the Endan-
25 gered Species Act of 1973 (16 U.S.C. 1539(f)(8)) for any

1 *person holding such a certificate with respect to the posses-*
2 *sion of pre-Act finished scrimshaw products or raw mate-*
3 *rial for such products shall remain valid for a period not*
4 *to exceed 5 years beginning on the date of enactment of this*
5 *Act.*

6 **SEC. 17. TECHNICAL AND CONFORMING AMENDMENTS.**

7 *The Act is amended—*

8 *(1) by redesignating, as title IV, the title III of*
9 *that Act that was added by section 3003 of the Ma-*
10 *rine Mammal Health and Stranding Response Act*
11 *(106 Stat. 5060);*

12 *(2) by redesignating the sections of that title in*
13 *order as sections 401, 402, 403, 404, 405, 406, 407,*
14 *408, and 409;*

15 *(3) in section 401(b)(3) (as redesignated by this*
16 *section) by striking “304” and inserting “404”;*

17 *(4) in section 405(b)(1)(A)(i) (as redesignated by*
18 *this section) by striking “304(b)” and inserting*
19 *“404(b)”;*

20 *(5) in section 406(a)(2)(A) (as redesignated by*
21 *this section) by striking “304(b)” and inserting*
22 *“404(b)”;*

23 *(6) in section 406(a)(2)(B) (as redesignated by*
24 *this section) by striking “304(c)” and inserting*
25 *“404(c)”;*

1 (7) in section 408(1) (as redesignated by this sec-
2 tion)—

3 (A) by striking “305” and inserting “405”,
4 and

5 (B) by striking “307” and inserting “407”;

6 (8) in section 408(2) (as redesignated by this sec-
7 tion) by striking “307” and inserting “407”;

8 (9) in section 409(1) (as redesignated by this sec-
9 tion) by striking “305(a)” and inserting “405(a)”;

10 (10) in section 409(5) (as redesignated by this
11 section) by striking “307(a)” and inserting “407(a)”;

12 (11) in section 102(a) (16 U.S.C. 1372(a)) by
13 striking “title III” and inserting “title IV”;

14 (12) in section 109(h)(1) (16 U.S.C. 1379(h)(1))
15 by striking “title III” and inserting “title IV”;

16 (13) in section 112(c) (16 U.S.C. 1382(c)) by
17 striking “or title III” and inserting “or title IV”; and

18 (14) in the table of contents in the first section,
19 by striking the items relating to the title that is redес-
20 ignated by paragraph (2) of this section and the sec-
21 tions that are redesignated by paragraph (3) of this
22 section and inserting the following:

“TITLE IV—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

“Sec. 401. Establishment of program.

“Sec. 402. Determination; data collection and dissemination.

“Sec. 403. Stranding response agreements.

“Sec. 404. Unusual mortality event response.

“Sec. 405. Unusual mortality event activity funding.

"Sec. 406. Liability.

"Sec. 407. National Marine Mammal Tissue Bank and tissue analysis.

"Sec. 408. Authorization of appropriations.

"Sec. 409. Definitions."

1 **SEC. 18. AUTHORIZATION OF APPROPRIATIONS FOR MA-**
 2 **RINE MAMMAL COMMISSION.**

3 (a) *AUTHORIZATION.—Title II (16 U.S.C. 1401 et*
 4 *seq.) is amended by adding at the end the following:*

5 **"SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

6 *"There are authorized to be appropriated to the Ma-*
 7 *rine Mammal Commission for carrying out this title*
 8 *\$1,500,000 for fiscal year 1994, \$1,550,000 for fiscal year*
 9 *1995, \$1,600,000 for fiscal year 1996, \$1,650,000 for fiscal*
 10 *year 1997, \$1,700,000 for fiscal year 1998, and \$1,750,000*
 11 *for fiscal year 1999."*

12 (b) *CLERICAL AMENDMENT.—The table of contents in*
 13 *the first section is amended by inserting after the item relat-*
 14 *ing to section 206 the following:*

"Sec. 207. Authorization of appropriations."

15 **SEC. 19. FURTHER TECHNICAL AND CONFORMING AMEND-**
 16 **MENTS.**

17 (a) *AMENDMENTS RELATING TO DEFINITION OF SEC-*
 18 *RETARY.—Section 3(12) of the Marine Mammal Protection*
 19 *Act of 1972 (16 U.S.C. 1362(12)) is amended in subpara-*
 20 *graph (B) by striking "title III" and inserting "title IV".*

21 (b) *AMENDMENTS RELATING TO DEFINITION OF POPU-*
 22 *LATION STOCK AND STOCK.—Section 3(11) of the Marine*

1 *Mammal Protection Act of 1972 (16 U.S.C. 1362(11)) is*
2 *amended to read as if section 3004(b) of the Marine Mam-*
3 *mal Health and Stranding Response Act were not enacted*
4 *(106 Stat. 5067).*

5 (c) *FURTHER CORRECTIONS TO DEFINITIONS.*—*Sec-*
6 *tion 3 (16 U.S.C. 1362) is amended—*

7 (1) *by striking paragraph (5);*

8 (2) *by redesignating paragraph (17) as para-*
9 *graph (5), and moving that paragraph so as to ap-*
10 *pear immediately following paragraph (4); and*

11 (3) *by redesignating the second paragraph (15)*
12 *(relating to the definition of the term “fishery”) and*
13 *paragraph (16) in order as paragraphs (16) and*
14 *(17).*

15 (d) *EFFECTIVE DATE.*—*The amendments made by*
16 *subsections (a) and (b) shall be effective as if enacted as*
17 *part of section 3004 of the Marine Mammal Health and*
18 *Stranding Response Act (106 Stat. 5067).*

Amend the title so as to read: “A bill to authorize the Marine Mammal Protection Act of 1972 for 6 fiscal years, to establish a new regime to govern the incidental taking of marine mammals in the course of commercial fishing operations, and for other purposes.”.

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